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## Policy Alert

SUBJECT: National Interest Waivers for Advanced Degree Professionals or Persons of Exceptional Ability

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the [USCIS Policy Manual](#) to address requests for national interest waivers for advanced degree professionals or persons of exceptional ability.

### Background

The Immigration and Nationality Act (INA)<sup>1</sup> provides that an employer can file an Immigrant Petition for Alien Workers ([Form I-140](#)) for a person of exceptional ability<sup>2</sup> or a member of the professions with an advanced degree.<sup>3</sup> Normally this process begins with the employer obtaining a labor certification from the U.S. Department of Labor. The INA, however, provides that USCIS may waive the job offer requirement, and thus the labor certification process, in the national interest. This national interest waiver essentially allows immigrants to petition for themselves, without an employer.

USCIS is now clarifying how the national interest waiver can be used by science, technology, engineering, and mathematics (STEM) graduates and entrepreneurs, as well as the significance of letters from governmental and quasi-governmental entities. The updated guidance serves to promote effective and efficient processing of benefits.

This guidance, contained in Volume 6 of the Policy Manual, is effective immediately. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

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<sup>1</sup> See [INA 203\(b\)\(2\)\(B\)\(i\)](#). See [8 CFR 204.5\(k\)\(4\)\(ii\)](#).

<sup>2</sup> A person with exceptional ability in the sciences, arts, or business has a degree of expertise significantly above that ordinarily encountered in one of those fields. See [8 CFR 204.5\(k\)\(2\)](#).

<sup>3</sup> See [8 CFR 204.5\(k\)\(2\)](#) (defining profession as one of the occupations listed in [INA 101\(a\)\(32\)](#), as well as any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation). An advanced degree is a U.S. degree or foreign equivalent above a baccalaureate or a U.S. baccalaureate or equivalent foreign degree followed by at least 5 years of progressive experience. See [8 CFR 204.5\(k\)\(2\)](#).

### Policy Highlights

- Explains adjudicatory framework for national interest waiver requests under *Matter of Dhanasar*,<sup>4</sup> including special considerations for endeavors in STEM fields, as well as the significance of letters from governmental and quasi-governmental entities.
- Expands on the discussion in *Matter of Dhanasar*,<sup>5</sup> to explain how the framework can apply to entrepreneurs.
- Incorporates *Matter of O-A, Inc.*,<sup>6</sup> explaining that USCIS considers the date of a provisional degree certificate for purposes of calculating post-baccalaureate experience.

### Citation

Volume 6: Immigrants, Part F, Employment-Based Classifications, Chapter 5, Advanced Degree or Exceptional Ability [[6 USCIS-PM F.5](#)].

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<sup>4</sup> See [Matter of Dhanasar](#), 26 I&N Dec. 884 (AAO 2016).

<sup>5</sup> See [Matter of Dhanasar](#), 26 I&N Dec. 884 (AAO 2016).

<sup>6</sup> See [Matter of O-A, Inc.](#), Adopted Decision 2017-03 (AAO Apr. 17, 2017).